IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4461 of 2004

with

SPECIAL CIVIL APPLICATION No 4644 & 5494 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GAC SHIPPING (I) PVT. LTD.

Versus

GUJARAT MARITIME BOARD

Appearance:

1. Special Civil Application No. 4461 of 2004
   MS PAURAMI B SHETH for Petitioner No. 1
   MR PR NANAVATI for Respondent No. 1
2. Special Civil Application No. 4644 & 5494 of 2004
   MS PAURAMI B SHETH for Petitioner No. 1
   MR PR NANAVATI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 22/02/2005

ORAL JUDGEMENT

As in all these petitions, the facts are, more or less, common and common questions are raised, they are being considered by this common judgment.

2. Mr.Nanavaty waives service of rule in Special Civil Application No.54594/04 when the matters are finally heard.

3. The Special Civil Application No.4461/04 is preferred challenging the letter, dated 1.4.04 as well as the letter, dated 4.2.04 issued by the respondent No.3 calling upon the petitioner to make payment as stated in the said letters. The petitioner has also prayed for appropriate writ to the respondents not to take any action including for not issuing NCC to the vessels calling at the port of the respondents. The petitioner has also prayed for permanent injunction against the respondents not to recover the amount as demanded, i.e. Rs.71,83,099/- and also against non-issuance of NCC to the vessels calling at the respondent's port.

4. The Special Civil Application No.4644/04 is preferred by the petitioner for challenging the similar letters, dated 1.4.04 and 4.2.2004 and for similar prayers except to the extent that the amount in question is R.39,41,791/-.

5. The Special Civil Application No.5494/04 is preferred challenging the letters, dated 4.2.04 and 1.4.04 and for other incidental prayers except the fact that the amount involved is of Rs.40,67,476/-.

6. Upon hearing the learned counsel appearing for the petitioners Ms.Paurami Sheth and Mr.Mehta as well as Mr.Nanavaty for the respondent Board it appears that there is no dispute on the point that the charges are sought to be recovered in respect of the vessel which has left the boundary of the port. The case of the petitioners is that had the demand made during the period when the vessel was within the boundary of the port, the petitioners, who can be said as agents, could have demanded the amount or recovered the amount from their principal concerned, whereas it is the case of the respondent Board that even if the vessel has left the boundary of the port, if there is short payment, the petitioners concerned who are authorised agents carry the

liability to pay the amount to the respondent Board.

7. I would have considered the question of liability of the petitioners and the right of the Board to recover, however, it appears that there is no dispute on the point that the procedure as required under section 45 of the Gujarat Maritime Board Act, 1981 (hereinafter referred to as "the Act") is not followed by the officer of the respondent Board before enforcing the recovery of the amount in question in the respective petition. Section 45 of the Act reads as under:

"45(1) When the Board is satisfied that any charge leviable under this Chapter has been short levied or erroneously refunded, it may issue a notice to the person who is liable to pay such charge or to whom the refund has erroneously made, requiring him to show cause why he should not pay the amount specified in the notice.

Provided that no such notice shall be issued after the expiry of three years--

(a) when the charge is short levied, from the date of the payment of the charge;

(b) where a charge has been erroneously refunded, from the date of the refund;

(2) The board may after considering the representation, if any, made by the person to whom notice is issued under subsection (1), determine the amount due from such person and thereupon such person shall pay the amount so determined."

The procedure as contemplated under section 45 of the Act provides for a notice and opportunity to the person concerned to make representation and thereafter to determine the amount due from such person and the liability would accrue upon such person if the amount is so determined. It appears that in the present case no notice under section 45 of the Act has been issued to the petitioners nor there is any determination of the amount and the petitioners have been called upon to make the payment by impugned letters. Therefore, even if there is noncompliance to the impugned letters and if the respondent Board is desirous to recover the amount from the petitioners, it would be required for the respondent Board to follow the procedure as required under section

45 of the Act and thereafter to determine the amount to be recovered from the person concerned. Until the procedure is undeertaken, enforcement of recovery of alleged amount as such can not be maintained. However, it appears that when the matter was at the stage of only correspondance through the impugned letters the petitioners have approached this court.

8. The learned counsel for the petitioners submit that the impugned letters issued by the respondent Board may be quashed in view of the procedure not followed by the respondent Board as per section 45 of the Act. In my view no such direction is required since the matter was at the stage of correspondance and the procedure as required under section 45 of the Act was yet to be followed. In any case, in view of the directions given herein after, such letters would not survive any more.

9. In view of the aforesaid, I find that the following directions shall meet with the ends of justice:

(i) The respondent Board shall issue a formal notice if it is desirous to recover the amount from the concerned petitioner under section 45 of the Act and if the notice is served the petitioners herein shall be at liberty to raise all the contentions which may be available in law to the said show cause notice.

(ii) After the representation is submitted by the petitioners to the show cause notice, the competent officer of the respondent Board shall take appropriate decision as per section 45(2) of the Act on the question of quantum of amount and also on the question of liability .

(iii) The aforesaid exercise shall be completed as early as possible preferably within a period of three months from the date of receipt of writ of this court.

10. In view of the above directions, the impugned communications vide letters dated 4.2.2004, 1.4.04 shall not survive till the final decision is taken by the competent officer of the Board as indicated earlier under section 45 of the Act.

11. All the petitions are allowed in terms of aforesaid directions. Rule is partly made absolute in each petition. Considering the facts and circumstances of the case, there shall be no order as to costs.

22.2.2005 (JAYANT PATEL,J)